S.B. Civil Writ Petition NO.1985/2005
Girdhari Lal
vs
Addl. District Judge (Fast Track), Parbatsar

DATE OF ORDER : - 5.4.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.OM Mehta, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 14th March, 2005 by which the petitioner's application under Section 151 read with Section 10 CPC was dismissed by the trial court.

Brief facts of the case are that a sessions case no.3/98 was registered against the petitioner as well as other accused persons on the allegations that one Sh.Usman died while he was in police custody and petitioner alongwith other persons were charged with the offence of murder under Section 302 IPC. The incident was of 17th June, 1997. In the Sessions Case, charges were framed on 16th July, 1999. The evidence of the prosecution was completed on 24th April, 2004 and 35 witnesses were produced in the criminal case. The statement of the accused were recorded by the Session Court on 30th July, 2003. The

petitioner took time to produce witnesses in his defence. One of the accused persons was examined as defence witness DW-1 on 13th August, 2004. On 2nd Nov., 2004 on behalf of accused Girdharilal, time was sought for filing written arguments, but he did not submit written arguments. The arguments of Ram Singh and Richpal Singh were completed on 9th Dec., 2004. The prosecution submitted written arguments on 15th Sept., 2004. The case was fixed for the judgment and at this stage, in S.B.Cr. Misc. Petition NO.56/2005, this Court stayed the further proceedings in the Sessions Case.

During this period, a suit for damages was filed by the non-petitioner-plaintiff Madina wife of victim Usman in the year 2000 claiming damages from the above accused person, which she suffered due to alleged murder of her husband by the accused persons including the petitioner. According to learned counsel for the petitioner that suit was filed as an indigent person. The petitioner has submitted written statement in that suit. The plaintiff's evidence has already been completed. The plaintiff's witnesses have already been cross-examined by the defendants including the petitioner himself.

At this stage in a suit, which was filed in the year 2000 and at the stage as mentioned above in criminal case, an application under Section 10 CPC was submitted by the petitioner on 17.2.2005 and he prayed that

in view of the pendency of the criminal case, the proceedings of the civil case be stayed. That application was dismissed by the trial court by impugned order dated 14th March, 2005.

According to learned counsel for the petitioner in view of the judgment of the Hon'ble Apex Court delivered in MS Sheriff and Anr. Vs. State of Madras reported in AIR 1954 SC 397, the trial court should have stayed the proceedings of the civil case. Learned counsel for the petitioner further relied upon the judgments of Bombay High Court delivered in the case of Arvind Kalidas Wadokhar Vs. Ramdas Devidas Joshi reported in 1996(2) CCC 700 (Bombay) and of Goa, Daman & DIU delivered in the case of Assumpcao Ribeiro & Ors Vs. Elaviano Boaventura Salvador Silveira & Ors reported in AIR 1979 God, Daman & DIU 37. According to learned counsel for the petitioner the Hon'ble Supreme Court in the case of MS Sheriff (supra) held that the only relevant consideration here is the likelihood of embarrassment and another factor which is that a civil suit often drags on for the years and public interest demands that justice should be swift and sure and there should be no conflicting judgments.

According to learned counsel for the petitioner, in view of the above authoritative pronouncement of the Hon'ble Apex Court as followed by the other High Courts, the proceedings in civil suit should

have been stayed by the trial court.

I considered the submissions of learned counsel for the petitioner and perused the judgments relied upon by learned counsel for the petitioner.

At the outset it may be noticed that Hon'ble Apex Court in the same judgment of MS Sheriff (supra) clearly pronounced that between civil and criminal proceedings, the criminal matter should be given precedence, but no hard and fast rule can be laid down and, thereafter further observed as under: -

> "This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceedings may be so near its end as to give precedence to prosecution ordered under Section 476.

In view of the above, before staying the proceedings of any case, criminal or civil, relevant fact is required to be seen and in this case as mentioned above, the suit was filed in the year 2000 and the written statement has already been filed and the petitioner has already disclosed his defence in written statement, apart from in cross-examination of the witnesses of the plaintiff and put his defence to the witnesses produced by the plaintiff and also disclosed his defence in the criminal case which has reached to the stage of final arguments after

the petitioner and other accused persons have already cross-examined the prosecution witnesses. The statements of accused have already been record in the criminal case, at this stage, there cannot be any reason for staying the proceedings of the civil suit. So far as contention of learned counsel for the petitioner that it may result into conflicting decisions, is not at all relevant because of the fact that the decision given by one court if binding on another court then that judgment can be submitted before the court where the litigation is pending and, therefore, that fact can be brought to the notice of the court and the court can act accordingly within the permissible limits as available in law. It will be worthwhile to mention here that the effect of the findings recorded in the civil court and its value in the criminal proceedings are to be seen by the courts according to law at relevant state only.

Therefore, I do not find any merit in the writ petition and the same is here dismissed as the application itself has been filed after such an inordinate delay, that too, after disclosing the defence by the petitioner in both the matters, criminal case as well as in civil court.

(Prakash Tatia), J.

c.p.goyal/-